Comment on Proposed Rule on 12 CFR Part 226 [Regulation Z; Docket No. R–1366]

The Board has been given a wonderful opportunity to provide clear, concise disclosures that would not favor any one source of publicly available mortgage funding. A research firm was hired to determine how consumers shop and what they comprehend in a disclosure.

To its credit, certain aspects of the rule are quite beneficial. Early, accurate disclosure is good for consumers and builds confidence in the industry. Certain proposed post-closing disclosures should be quite valuable where balloon payments, ARM adjustments or negative amortization are present. Adding the contract interest rate to the Truth-In-Lending disclosure has been in practice by better originators and creditors for some time. The research correlates to what we see in the marketplace. Correctly, "Participants consistently looked for the contract rate of interest, monthly payment, and in some cases, closing costs." Notably absent in what consumers look for are APR, Finance Charge and lender compensation to brokers.

Once the results were in, it would be expected the methodology for developing new disclosures would closely reflect what was uncovered in the consumer research. Sadly, this rule follows the same old path the Federal Reserve has followed in the past, focusing on terms and figures the Board admits consumers do not understand. This rule could be far more effective if it focused more on giving useful disclosures and greater protection to consumers. The only dramatically new concept in the rule is an alarming attack on small business and financial service employees while giving large businesses significant advantages. The rule attacks certain segments of the financial service industry while more less winking at the market makers and the major purveyors of hidden fees. This rule makes the Federal Reserve look more like a gnat swatter rather than a bank regulator if one looks at this rule from a macro economic perspective. It does little to reassure anyone, especially Congress, that the Federal Reserve is doing it mandate to carry out what the Truth-In-Act was created to accomplish.

Let's start with the keystone of the Board's disclosure, the APR and Finance Charge. The Board's own testing revealed that these terms and numbers are not useful. Rather, they confuse borrowers which can cause them to accept more expensive loans or pass up a beneficial loan. "Consumer testing suggests that consumers find the finance charge and APR disclosure confusing and unhelpful when shopping for a mortgage." I personally had an informed borrower recently call to tell us that he was cancelling his loan application due to an MDIA required re-disclosure. Although he had been correctly disclosed under MDIA earlier, he had apparently not noticed the APR. He believed we had promised him an interest rate of 5%, not the 5.6% Annual Percentage Rate showing on the TIL disclosure. The result would have been a loss of his appraisal fee, hours of time and $83,000 in savings over the life of the loan. Rather than eliminating these numbers that serve only to confuse consumers, the Board is proposing to increase the prominence of their use.

Surprisingly, the firm found that most borrowers did not shop loans from parties whom they did not know or were not recommended. The research also revealed that once a borrower has selected a particular program or product provider, they turned their attention to other matters until settlement. Logically, this would mean new disclosures that were easy to understand quickly should be provided a soon as possible. This is supposed to be accomplished by requiring that a creditor provide an accurate disclosure within three days of application. On the surface that sounds admirable. After looking at this in practice, we find this proposed rule and the MDIA implementation fall far short. When a third party is involved, such as a mortgage broker, there is no creditor. Unlike, RESPA, the disclosure requirement only applies to creditors, not mortgage brokers. In fact, as long as no fees change hands other than a credit report, MDIA disclosure could be delayed indefinitely when a third party originator is involved. This is long after the borrower has committed to a transaction that is not fully and accurately disclosed. There is a very simple fix not proposed in this rule. With the enactment of the SAFE Act, the burden of early, accurate disclosure should rest with the originator, not the creditor. The seven-day tolling should begin when the borrower has been provided the originator's early disclosure. That should not alleviate disclosure by the creditor. If a creditor accepts a loan from a third party, the creditor must assure themselves that proper disclosure has been made. There should be consequences for inaccurate initial disclosure given the crucial commitment that the consumer makes to the originator. However, even if penalties are assessed on the originator, the creditor should be allowed to proceed after giving accurate disclosure to avoid harming the consumer. Mandating early, accurate disclosures by the originator should end the "long-standing concerns about consumers facing different loan terms or increased settlement costs at closing."

"The Board recognizes that requiring that loan terms and costs be finalized several days before consummation would require significant changes to current settlement practices. These changes would generate costs that creditors and third-party service providers would pass on to consumers." Does the Board realize how expensive and damaging this would be to consumers? It is somewhat meaningless protection since knowing 3 or even 7 days before settlement will have no difference for consumers purchasing a home. This is reinforced by the Board's own research. When we consider an average rate lock to be 30 days, over half of that time is simply waiting time for early disclosures, 7-day waiting, re-disclosure and rescission. This adds approximately .375% to the cost of every mortgage or billions of dollars every year.

When a third-party originator is involved, intervention by a creditor with their disclosures at this time seems to confuse borrowers. The Board still seems unaware of how disclosures are given and how borrowers shop when utilizing a third party. Borrowers do not shop the end lender when they are applying for loans with mortgage brokers. Imposing a relationship with a creditor too early in the process to enable an appraisal to be ordered, is not beneficial to consumers. This tends to delay the process and force the third-party originator to place the borrower with a creditor who may not be the best choice when all facts are known. This has been a serious problem with the HVCC. Borrowers have been forced prematurely into a creditor relationship that can cause them to pay for more than one appraisal and lose time. It is costly to the borrower and to industry to force a premature creditor relationship. It is far more valuable for borrowers to know the disclosure terms being offered by the originator that may be available from several creditors. Borrowers become confused if the creditor is forced upon them at the time of origination. Borrowers may think the retail branch of a lender gave them the disclosures only to find that the program may not be offered by the retail branch, offered at a higher rate or cost or other service providers were used in the estimate. Correspondent lenders are given a significant benefit over mortgage brokers since they are not required to form the lender bond prematurely although the process is virtually identical to that of a mortgage broker.

The Board's research indicates that little if anything is gained by subsequent disclosures within a few days of settlement. For this reason, the initial disclosure should be the keystone of the Board's rulemaking. Providing borrowers with a new disclosure three days before settlement can create a never-ending spiral of losses and frustration to the consumer and to industry. The present rule of an accurate disclosure at settlement that complies with the normal tolerances of 1/8 of a percent from the initial disclosures based on a constant per diem interest calculation would be a great incentive for all parties to provide accurate early disclosures. One exception would be when a borrower knowingly chooses to "float" their interest rate. In that case, a disclosure at time of lock should be required. A waiting period may even be proscribed when the program is changed. The rule itself proposes this alternative *"Smaller APR increases or other changes to loan terms would not trigger a three-day delay in consummation, however."*

Notably absent in this rule is any provision to improve advertising of loan terms. The Board must be aware that its current rules regarding advertising are either ignored or provide insufficient protection. One can appreciate the Board's desire to help borrowers understand adjustable and exotic mortgages by giving disclosure very early in process. Providing disclosures on more complex products prior to application is more of a challenge than it might appear. Often these events happen almost simultaneously. The Board needs to seriously evaluate its advertising rules at this time. With the advent of the internet, any advertisement of an ARM or exotic should include a web site address where the potential borrower can view a disclosure of the product. Perhaps advertising any triggering term should include an internet address where the consumer could view disclosures. This would serve to give advance disclosure even before a borrower would contact the broker or creditor. It is becoming increasingly clear that the Board's narrow interpretation of Creditor needs to be expanded with regard to at least disclosure regulations, to anyone offering credit terms.

The "all in" concept has merit but it will have little impact. The reality is that most fees are already included in the Finance Charge. Under "all in," any fee that would not be present in an all-cash transaction would be part of the Finance Charge. In current practice, that is usually the case. When the Board added the requirement that fees should be included in the Finance Charge simply because the lender required the service violated that principle. Borrowers generally pay the same Settlement Charge and Attorney's Fees in an all-cash transaction. Should the Board choose to include fees such as the appraisal and credit report and return to the exclusion for fees encountered in an "all-cash" transaction, the difference would be inconsequential.

Should the Board take the approach that all fees in the transaction should be included in the Finance Charge, even if present in a cash transaction, it would only serve to mislead consumers. A borrower would wrongly conclude that it would be more costly by this measure to obtain financing than is the case. Such an incorrect decision could cost consumers thousands of dollars in lost opportunity by using their funds elsewhere or possibly not purchasing a home at all based on a faulty understanding of costs. Compounded by the fact that the APR and Finance Charge are not readily understood by consumers, the Board should carefully reconsider this approach.

The Board proposes that the revised Good Faith Estimate may be used in lieu of the itemization of amount financed. This is simply not possible since the TIL still has some "fees in and out" and rightfully so since its goal is reveal the true cost of credit. Utilizing the new GFE for TIL purposes is such a poor approach that it should be abandoned altogether. Lack of itemization in the RESPA rule will make it much more difficult to determine which fees should have been in the Finance Charge. This would be especially true when a loan would be subject to an investigation well after closing. HUD prohibits re-disclosing unless there is an approved "changed circumstance." However, there could be changes, such as points on an unlocked loan that would cause the APR and Finance Charge to change. The Board will need to consider either abandoning the itemization or requiring it in addition to the GFE. If it is provided in addition, it negates the prohibition against itemization that HUD is so insistent upon in the GFE and HUD-1. In essence, we have dueling regulations.

Since the Board is charged with protecting consumers, some of its concerns do deserve consideration. If a practice is inherently unfair or deceptive, it appears the Board has the authority to prohibit such behavior. In this rule, the Board has chosen to find only one practice in lending inherently unfair or deceptive, yield spread premiums or payments to brokers for loan features. The Board admits Yield-Spread premiums (YSP) "may provide some benefit to consumers because consumers do not have to pay loan originators' compensation in cash or through financing. However, the Board believes that this benefit may be outweighed by costs to consumers, such as when consumers pay a higher interest rate or obtain a loan with terms the consumer may not otherwise have chosen, such as a prepayment penalty or an adjustable rate." When a borrower finances fees, those fees are now part of the balance, even if the loan is paid of early. That is not the case with a fee paid through a Yield-Spread premium. Despite its acknowledgement of the value of YSPs, it seems the Board concludes that it may warrant banning YSP altogether.

The first flaw in attacking these lender payments is there is little credible evidence that this is a pervasive problem. Using HUD's limited study as a guide is unwise. HUD created a highly questionable study to prop up its new RESPA rule that covered only a tiny snapshot of time nearly 8 years earlier and only on FHA loans. Other evidence is purely anecdotal. There are several unbiased studies that show that borrowers benefit by Yield Spread Premiums. The Federal Trade Commission, in its extensive studies, found no justification to ban these lender payments to brokers. (James M. Lacko and Janis K. Pappalardo, *Improving Consumer Mortgage Disclosures: An Empirical Assessment of Current* *and Protoype Disclosure Forms (2007), ("Improving Consumer Mortgage Disclosures")) While* it may or may not be legal for the Board to single out this method of compensating mortgage brokers and other originators, it will do little or nothing to prevent the practice of compensating companies that originate loans from being compensated for increasing the rate. It will simply shift the profit to larger entities. Wholesale lenders will realize the gain by increasing rates. Retail lenders who sell their loans will retain the entire profit from increasing rates rather than sharing it with their originators.

The question arises if being paid for providing a loan at a certain rate agreed upon by the borrower is an unfair or deceptive practice.

"Section 129(l)(2) is not limited to acts or practices by creditors, nor is it limited to loan terms or lending practices. *See 15 U.S.C. 1639(l)(2). It authorizes protections against* unfair or deceptive practices ''in connection with mortgage loans,''
It is very easy to make disclosures to consumers that would make wrong assumptions avoidable. Let's examine the possible areas where a borrower can be misled.
"Furthermore, based on its experience with consumer testing, particularly in connection with the HOEPA proposal, the Board believes that disclosure alone would be insufficient for most consumers to avoid the harm caused by this practice. Thus, the Board is proposing a rule that would remedy the practice through substantive regulations that prohibit particular practices."

The Board believes this problem occurs because borrowers think a broker will look out for the borrower's interest. The Board states:
"For example, they may be less likely to seek out brokers who will promise in writing to obtain the lowest rate available." If borrowers should "*seek out brokers who will promise in writing to obtain the lowest rate available,"* as the Board states, they are most certainly going to be disappointed and abused. It would indeed be a dishonest originator or lender who made such a statement. No one can promise the lowest rate available. Someone else can always offer a lower rate, even to the point of paying the borrower rather than receiving a rate. This nebulous language is precisely why we have the problem and here we find the Board encouraging it. This shows a total lack of understanding of the issue by the Board.

The Board says its answer to practices that borrowers don't understand that may be abused is to outlaw the practice. However, the board has not looked at outlawing any other practices other than brokers being paid for delivering a loan with fully disclosed rate and fees to the borrower. It is **presumed** that the borrower was injured based on very biased studies that claim the borrower received less benefit for the YSP than borrowers who went to a retailer mortgage banker. Could it be that the borrower was perfectly happy with the convenience, availability and assistance offered by the broker and was willing to pay slightly more for that service? Consumers know full-well that a convenience store is sonewhat higher than a grocery store but they are willing to pay the difference for the convenience. Brokers offer more than convenience. They offer assistance that is very valuable to consumers. The Board ignores practices that it admits the borrower does not understand, choosing instead to attack the delivery system. If the

Board feels prepayment penalties are inherently misunderstood and abusive, why hasn't the Board proposed to ban them? If borrowers do not understand balloon payments, why is their no provision to ban them? If adjustable rate margins and caps are misunderstood and abused, why doesn't the Board regulate them or ban them? If the Board wants to retain them for some borrowers, why doesn't the Board require counseling before a borrower can take out a loan with these features? Since advertising that someone has the best rate is misleading and injurious, why hasn't the Board moved to ban such advertising and claims such as "We will shop to get you the best rate?" One can find advertising everywhere that violates current Truth-in-Lending laws and rules with little or no action being taken by the Fed. The Board does not lack for tools that would easily clean up what it considers unfair.

Its own studies show the Board that its own disclosures serve to mislead consumers yet the Board refuses to abandon disclosures such as the APR, Finance Charge, Amount Financed and Total of Payments. If the Board simply took its own consumer testing to heart, it would prominently display (1) the Note interest rate (2) the monthly payment (3) closing costs to the borrower (not cash flow). The Board freely admits consumers do not use the terms the Board most prominently features. If the three items consumers use as shopping tools were simply made absolutely clear to the consumer, the issue of whether or not another party paid the originator becomes irrelevant.

In the 2007 proposed rule, the Board required a written agreement between the broker and the borrower that "would have disclosed (1) that the consumer ultimately would bear the cost of the entire compensation even if the creditor paid part of it directly; and (2) that a creditor's payment to a broker could influence the broker to offer the consumer loan terms or products that would not be in the consumer's interest or the most favorable the consumer could obtain." These are flawed statements that both the Board and HUD seem to still believe. Lenders, such as banks and financial service companies, have been known to offer mortgages to obtain customers for other products and show a loss in their mortgage division as a result. Certainly, the Creditor did not anticipate the borrower repaying the compensation from the mortgage as HUD and the Board state. Secondly, idea that there is such a thing as "the most favorable terms" is subjective. What is favorable to one person may not be favorable to another. No two borrowers exactly similarly situated. Again, we must question why the Board is not proposing to regulate terms and products that are not in the consumer's interest if that readily determinable.

How can the Board be so naïve as to think that **only** mortgage brokers and loan originators of lenders have an incentive to promote higher earnings? Often, management at the highest level has more pressure and more to lose when profits or perceived profits are not ever-increasing than originators. Publicly-traded companies are often measured by growth rather than stability of profit. The programs the Fed has labeled as abusive or potentially abuse were not created at the origination level. It was well-known that companies who had well-paid, salaried originators expected those originators to push borrowers to higher rates and even into credit life insurance to ensure that profitably levels were maintained or growing. That occurred long before originators ever shared in those practices. In those days, the originators were salaried but the practice of upselling rates and pushing products was more prevalent than it is today. The rule could easily be defeated by lenders who could pay loan officers higher salaries or bonuses for pushing certain programs and rates. It seems regulators forget that lenders design loan programs, not brokers and loan officers. It is likely that elimination of payments to brokers, whose compensation reflects the reality of the market, will cause irreparable damage to the broker channel reducing competition and raising costs to consumers. The greatest problems seen in recent times were created by companies such as Ameriquest that upsold loans in the secondary market. Under this rule, they could continue to operate unimpeded and without disclosure under the assumption that their upselling would not be able to be discerned. Mortgage brokers actually are the only restraining force on such companies. To disadvantage them effectively opens the door to these large companies to upsell loans without competition.

It is far better to provide borrowers with simple disclosures that prominently display the items Board testing proved consumers shop for. Instead, each agency seems more interested in focusing borrowers on items borrowers don't understand or in which they have low interest levels. A good example is the yield-spread premium. When a borrower shops by this premium they are very likely to choose the wrong loan and be distracted from the three primary reasons the Fed found borrowers choose a loan. It has been demonstrated over and over that a higher premium to the broker very often does not mean another originator with less premium would have been able to offer a better rate or less costs.

The Board has said its studies indicate borrowers do not understand yield-based compensation. The Federal Trade Commission seems to concur. Obviously, HUD feels strongly that its consumer testing proves otherwise. One would think that an arbiter would be called in to decide whether HUD had truly discovered a way for a borrower to correctly choose a program where the broker is receiving third-party compensation or whether this cannot be accomplished through disclosure. Instead, the Fed is busily preparing to undo the new RESPA disclosures by essentially outlawing the rationale for HUD's disclosures.

It would be best to have a very prominent disclosure that offers two options:

1. The broker is working specifically for the borrower and will pass on to the borrower all payments made to the broker by others to offset the predetermined fee being charged by the broker. This is essentially what HUD has attempted to do with the new RESPA rule, albeit somewhat clumsily. This broker must assume the duty of due diligence in researching loan products and being able to present a reasonable representation to the borrower.

2. The broker is an independent business who offers a loan product selected by the borrower and makes clear representation that this type of broker is not the agent of borrower. This type of broker will not be required to shop for the best product for the borrower. The cost and description of the loan would be disclosed in essentially the same manner as a lender.

Essentially one is a service provider and the other a product provider.

When we read the Board's rational for excluding rate-based payments, the exact same wording could be used for all but portfolio lenders simply by exchanging the word investor for Creditor and lender for mortgage broker:

"The Board shares concerns, however, that creditors' payments to mortgage brokers are not transparent to consumers and are potentially unfair to them. Creditor payments to brokers based on the interest rate give brokers an incentive to provide consumers loans with higher interest rates. Some brokers may refrain from acting on this incentive out of legal, business, or ethical considerations. Moreover, competition in the mortgage loan market may often limit brokers' ability to act on the incentive. The market often leaves brokers room to act on the incentive should they choose, however, especially as to consumers who are less sophisticated and less likely to shop among either loans or brokers. Large numbers of consumers are simply not aware the incentive exists. Many consumers do not know that creditors pay brokers based on the interest rate, and the current legally required disclosures seem to have only limited effect. Some consumers may not even know that creditors pay brokers: A common broker practice of charging a small part of its compensation directly to the consumer, to be paid from the consumer's existing resources or loan proceeds, may lead consumers to believe, incorrectly, that this amount is all the consumer will pay or that the broker will receive. Consumers who do understand that the creditor pays the broker based on the interest rate may not fully understand the implications of the practice. They may not appreciate the full extent of the incentive the practice gives the broker to increase the rate because they do not know the dollar amount of the creditor's payment."

The Board shares concerns, however, that investor's payments to mortgage lenders are not transparent to consumers and are potentially unfair to them. Investor payments to lenders based on the interest rate give lenders an incentive to provide consumers loans with higher interest rates. Some lenders may refrain from acting on this incentive out of legal, business, or ethical considerations. Moreover, competition in the mortgage loan market may often limit lenders' ability to act on the incentive. The market often leaves lenders room to act on the incentive should they choose, however, especially as to consumers who are less sophisticated and less likely to shop among either loans or lenders. Large numbers of consumers are simply not aware the incentive exists. Many consumers do not know that investors pay lenders based on the interest rate, and the current legally required disclosures seem to have only limited effect. Some consumers may not even know that investors pay lenders: A common lender practice of charging a small part of its compensation directly to the consumer, to be paid from the consumer's existing resources or loan proceeds, may lead consumers to believe, incorrectly, that this amount is all the consumer will pay or that the lender will receive. Consumers who do understand that the investor pays the lender based on the interest rate may not fully understand the implications of the practice. They may not appreciate the full extent of the incentive the practice gives the lender to increase the rate because they do not know the dollar amount of the investor's payment.

"The Board also seeks comment on an optional proposal that would prohibit loan originators from directing or ''steering'' consumers to a particular creditor's loan products based on the fact that the loan originator will receive additional compensation even when that loan may not be in the consumer's best interest. The Board solicits comment on whether the proposed rule would be effective in achieving the stated purpose. In addition, the Board solicits comment on the feasibility and practicality of such a rule, its enforceability, and any unintended adverse effects the rule might have."

The Board apparently thinks it has no power to prevent creditor companies from steering borrowers into inappropriate loan products. Therefore, the Board only attempts to regulate originators and mortgage broker companies. This does nothing to prevent creditors from creating products that the Board claims have a better yield, despite having a higher rate, prepayment penalty or negative amortization. It also has no effect on creditors pushing rates on individual buyers higher. It penalizes mortgage broker companies by allowing them to set income for the products they offer that is fully disclosed and acceptable to borrowers while creditor companies can set income wherever they like without disclosure. Since creditor companies have this total flexibility, attempting to regulate their originators is impossible. This is a merely a veiled attack on mortgage brokers and mortgage broker companies. Unless TILA is construed to be a revenue-fixing statute, this is inconsistent with the law itself. It will also do nothing to prevent upselling rates since it will pressure more and more broker companies to be branches of creditors. This increases costs to consumers, allows for less disclosure since mortgage brokers already disclose more than creditors and negates the benefits consumers gain from the new RESPA rule. It is well-known that mortgage broker payments are more or less for goods, services and facilities rather than the so-called Yield-Spread. The so-called Par Rate is a fantasy since no borrower can access a wholesale par rate. They can only access a retail par rate. Despite the behavior of the Board and HUD that has tended to make wholesale pricing worse than loan sale pricing recently, we find on the street mortgage brokers are offering better rates and fees to their borrowers than their creditor counterparts. It should not go unnoticed that creditor profit margins have soared as the attacks on mortgage brokers escalate. It costs a creditor approximately two to three percent of the principal balance of the loans originated to operate a retail branch. This does not include the cost to build the building or open the branch. It only makes sense to utilize mortgage brokers and pay them up to three percent of a loan, on a per-loan basis, to escape the costs and overhead of a branch. Only when the payment to the brokerage exceeds two to three percent is a Yield Spread even in play. The Board and HUD have spent enormous amounts of energy on this issue that conflicts what borrowers feel is in their best interest and is based on myths that the lender payment to the broker will be recovered from the extra interest on the loan. The payment will be recovered irrespective of a slight rate differential of ¼ to ½ percent in rate because the rate has already taken into account the cost of origination when a loan is originated at the retail level. There is no assurance that the lender will ever recover the entire payment to the broker or its retail branch from the so-called YSP or SRP nor do creditors expect that. They will recover these payments in several months from the market interest rate that they have set. Therefore, what is attempted to be regulated is not YSP or SRP at all. It is the normal cost of goods, services and facilities required by a broker or a retail branch. The natural response to the elimination of market-driven rates and payments is simply to increase the rate on all loans. This is hardly in the best interest of consumers. Even if the Board considers any payment over three percent to be potential steering, it will affect small loans and benefit the more affluent since the broker will concentrate their services on larger loans. Smaller loans tend to be in inner-city areas where most large banks have no presence, disproportionately affecting minorities. If the Board should choose to eliminate lender payments to brokers, it will stifle competition by driving brokers from the market. I can remember a while back when creditors commonly charged several points and received several percent in gain on sale. That will become the norm again if the Board eliminates market-driven payments to brokers.

In a new twist the rule states "…if a consumer directly pays the loan originator, the proposed rule would prohibit the originator from also receiving compensation from any other party in connection with that transaction." This is awkward for consumers and originators. Many loans fall into the category of the originator being partially paid by the borrower and a third party. This is to the consumer's benefit. Otherwise, an "interest rate gap" would appear in all loans or the borrower would overpay. An example would be an originator needs to make a profit of 2% of the loan amount. At 5.5% the lender would pay the originator the 2%. At 5.25%, the borrower would need to pay the originator 1% and the lender would pay 1%. This is being proposed as unacceptable. At 5.25% the borrower could be forced to pay all of the 2%, something that seems to harm the borrower. Or, some originators would lower the rate to 5% and charge the borrower

2% in fees. Either way, it is the borrower who is harmed. Those borrowers who do not have 2% to pay will not get their loans. Others will be forced to go to 5.5% when they could easily have received 5.25%. Finally, it gives an incentive for originators to not pass on the benefit of a fee being partially paid by a lender.

Requiring notice of the cost of force-placed insurance 45 days prior to imposing it could place lenders at extreme risk. A property could be destroyed before insurance could be placed on the property. The other alternative would be for the lender to quote a rate they could always rely would cover the cost. Of course, that would usually be a more expensive rate. *"In addition, proposed § 226.20(e)(4) would require the creditor to provide the consumer with evidence of creditor-placed property insurance within 15 days of imposing a charge for such insurance.*" (43275)
"Proposed § 226.20(e)(2) contains three conditions for charging for creditor-placed property insurance. First, proposed § 226.20(e)(2)(i) would require the creditor to make a reasonable determination that the required property insurance had lapsed. Second, proposed § 226.20(e)(2)(ii) would require the creditor to mail or deliver to the consumer a written notice containing the information required by the proposed rule at least 45 days before a charge is imposed on the consumer for the creditor-placed property insurance. Finally, proposed § 226.20(e)(2)(iii) would permit the creditor to charge the consumer if, during the 45-day notice period, the consumer did not provide the creditor with evidence of adequate property insurance." (43276) It is too late once insurance has lapsed. Even if borrowers did eventually show that they had insurance, lenders would suffer great expense covering the property for 45 days without reimbursement as well as lost man-hours. This is an insurance problem, not a lender problem. Insurance companies charging greatly higher rates is the problem. The other problem is the borrower who lets the insurance lapse yet bears no responsibility.

There is much food for thought here. I would hope the Board will carefully consider the impact of its rule on consumers, industry and the economy.

Sincerely,

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